UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

State of Oklahoma, et al., Plaintiffs, v. Tyson Foods, Inc., et al., Defendants.	05-CV-0329 GKF-PJC **THE CARGILL DEFENDANTS' MOTION TO COMPEL COMPLETE RESPONSES TO THEIR DISCOVERY REQUESTS**

Cargill, Inc. and Cargill Turkey Production, LLC ("CTP") (collectively, the "Cargill Defendants") respectfully move the Court to compel Plaintiffs to respond fully to the Cargill Defendants' February 17, 2009 set of discovery requests and to supplement certain responses to the Cargill Defendants' First Amended First Set of Interrogatories and Requests for Production, and offer this integrated brief in support.

The Cargill Defendants certify they have in good faith attempted to confer with Plaintiffs in an effort to obtain the discovery sought by this motion without court action.[1]

RELEVANT PRIOR DISCOVERY RULINGS

In February and May 2007, this Court largely granted motions brought by the Tyson and Cargill Defendants to compel discovery from Plaintiffs. The Court compelled Plaintiffs to provide supplemental, detailed productions to Defendants to cure the many failures in Plaintiffs' initial responses and productions. (See generally Feb. 24, 2007 Ord.: Dkt. No. 1063 & May 17,

[1] Specifically, the Cargill Defendants' attorneys have repeatedly asked Plaintiffs' attorneys to meet and confer with them about these issues, but Plaintiffs' attorneys have declined thus far to make themselves available for such a conference. (See Exs. A & B.) Given Plaintiffs' position about the discovery deadline (see Dkt. No. 1935), and the importance of the discovery at issue, the Cargill Defendants determined that they could not wait any longer for Plaintiffs but needed to file the motion. The Cargill Defendants will continue to try to meet with Plaintiffs' counsel and will advise the Court immediately of any issues that are resolved.

2007 Ord.: Dkt. No. 1150.)

In particular, the Court admonished Plaintiffs for providing circular, unhelpful answers to the Tyson Defendants' interrogatories, for instance by "answering [an] interrogatory by stating that the violations occur wherever a violation has occurred." (Feb. 24, 2007 Ord. at 11.) "[E]ven considering the complexities of the case and the served interrogatories, the Court cannot conclude that Plaintiff has sufficiently responded to the interrogatories." (Id. at 6.) The Court emphasized that while it "recognize[d] the difficulties inherent in responding to … interrogatories such as those propounded by Defendants, … the fact that something is difficult does not excuse a response." (Id. at 7.)

Hence, in the May 17, 2007 Order, the Court found that Plaintiffs' responses to requests for Cargill-specific information failed. The Court ordered Plaintiffs to supplement their responses to Cargill Interrogatories 9 and 13 respectively "describing with particularity each instance of which Plaintiff has knowledge where a Cargill entity has used poultry waste disposal practices in violation of federal and state laws and regulations" and "has created or maintained a nuisance in the State of Oklahoma." (May 17, 2007 Ord. at 8-9.) The Court specified that if Plaintiffs had "no direct evidence" and were instead "relying on circumstantial evidence, the response shall so state and shall describe the circumstantial evidence with as much particularity as possible." (Id.) Further, if Plaintiffs had no direct or circumstantial evidence other than that already provided, the Court ordered Plaintiffs to so state. (Id. at 9.)

Defendants' earlier motions to compel especially objected to Plaintiffs' failure to specify *which* documents were responsive to the interrogatories Plaintiffs answered with Rule 33(d) designations. The Court agreed and was "not persuaded … that the numerous documents referenced by Plaintiff as responsive to a given interrogatory satisfies Fed. R. Civ. Proc. 33(d)."

(Feb. 24, 2007 Ord. at 7.) The May 17, 2007 Order later memorialized Plaintiffs' agreement to supplement such interrogatory responses with more particular designations in line with the Court's February rulings directing Plaintiffs to provide a great deal more specificity in their responses. (May 17, 2007 Ord. at 2.) The Court further directed that a party responding to interrogatories by invoking Rule 33(d) "has a duty to indicate, with some degree of specificity, from what documents the answer can be 'derived or ascertained.'" (Id. at 3.) Magistrate Judge Joyner thus ordered Plaintiffs to "clearly identif[y]" the documents containing an interrogatory's answer. (Id.)

The Court's May 17, 2007 Order also required that Plaintiffs' supplemental document production "shall insure that a complete and fully accurate index ... show[s] the box number which responds to each specific [request for production]" so that all Defendants could make sense of the mass of documents at play. (May 17, 2007 Ord. at 7.)

Later, in September 2007, at oral argument on a motion for sanctions against Plaintiffs for continued related discovery violations, Plaintiffs' counsel "confess[ed]" that Plaintiffs had "overused" the option of Rule 33(d) to produce documents in lieu of narrative responses when responding to the Cargill Defendants' earlier interrogatories. (Sept. 27, 2007 Hrg. Tr. at 39: Dkt. No. 1317; see also id. at 52: "We over designated 33(d) in the beginning …"; cf. Oct. 24, 2007 Ord. at 4: Dkt. No. 1336 and Jan. 11, 2008 Ord.: Dkt. No. 1451 (discussing this issue and declining to issue a flat monetary sanction).

FACTUAL BACKGROUND OF THE PRESENT DISPUTE

In an effort to narrow issues and evidence for trial, the Cargill Defendants served Plaintiffs with a set of focused requests for admission ("RFAs"), interrogatories, and document requests on February 17, 2009. Plaintiffs responded on March 19 by providing largely

noncommittal responses and by vaguely directing the Cargill Defendants to enormous collections of undifferentiated documents. Plaintiffs' response fails to reference even a single bates number or document box number, and does not represent that Plaintiffs will produce even a single responsive document. (See Dkt. No. 1933-12 at 1-18.) Moreover, Plaintiffs rely on unsupported assertions of burden and overbreadth without information, and incorrectly claim that the Cargill Defendants had served too many RFAs when the Cargill Defendants have not yet even served the minimum number allowed by this District's Local Rules. (Id.); see also N.D. Okla. LCvR 36.1.

On March 24, 2009, the Cargill Defendants' attorneys sent a letter to Plaintiffs' attorneys detailing the numerous insufficiencies in Plaintiffs' responses, and demanding that Plaintiffs withdraw their improper burden and Local Rule 34.1 objections. (Mar. 24, 2009 Ltr. from B. Jones to B. Nance: Ex. A.) To expedite the meet and confer process, the Cargill Defendants revised four RFAs to conform to Plaintiffs' objections to use of the verb "issue" to describe the role of Oklahoma's agencies with respect to poultry growers' Animal Waste Management Plans ("AWMPs"). Although the Cargill Defendants believe that these requests accurately and clearly reflect the record concerning the State's involvement with the AWMPs, the Cargill Defendants modified RFA Nos. 7-10 to reflect the language used in transcript pages of Ms. Teena Gunter's deposition that Plaintiffs cite at pages 9-10 of their March 19 response. (Id. at 3 and attachments.)

Given the impending fact discovery deadline, the Cargill Defendants suggested that the parties meet and confer by the afternoon of March 26. (Id.) On the evening of March 25, Plaintiffs declined, calling the request to confer "unrealistic and unreasonable" and refusing to provide an alternative conference date, promising only to "get back as soon as possible either

orally or in writing." (Mar. 25-27, 2009 Email chain between B. Nance & B. Jones: Ex. B.)

Meanwhile, the Cargill Defendants have also long sought discrete supplementation of Plaintiffs' responses to the Cargill Defendants' Amended First Set of Interrogatories and Requests for Production originally served in August 2006. After their initial responses, Plaintiffs provided some supplementation in June and October 2007 under direct Court Orders. (Pls.' Dec. 2006 Resps. at Dkt. Nos. 1933-7, 1933-8, and 1933-9; Pls.' June 2007 Supp. Resps. at Dkt. Nos. 1933-10 and 1933-11; Pls.' Oct. 2007 Supp. at 1933-12 and 1933-12, *attached as Ex. 2 to Pls.' Mar. 2009 Resps.*) Plaintiffs implicitly recognized the incomplete nature of their October 2007 supplementations, explaining that their liability experts were still collecting data and performing analyses responsive to Cargill Interrogatory Nos. 9 and 13. (Dkt. No. 1933-12 at Ex. 2 internal pages 2-3, 4, 6, 7, 9, 11-12 and at docket entry pages 39-40, 41, 43, 44, 46, 48-49.) Plaintiffs promised to supplement Interrogatory No. 13 regarding proof of a nuisance "as responsive information is identified, except the State will disclose information known or opinions held by expert consultants … pursuant to the Court's Scheduling Order." (Id. at internal pages 11-12; docket entry pages 48-49.)

After considerable additional discovery has taken place, the Cargill Defendants requested supplementation once again and, in a letter dated October 17, 2008, the Cargill Defendants identified to Plaintiffs the specific interrogatories as to which they sought supplementation. (Oct. 17, 2008 Ltr. from B. Jones to R. Garren & D. Page: Ex. C.) The Cargill Defendants reminded Plaintiffs of their Rule 26(e) duty to supplement their deficient responses and noted that Plaintiffs had at that time possessed the Cargill Defendants' documents for more than 21 months and had taken both 30(b)(6) and individual depositions of Cargill personnel, and that the deadline for Plaintiffs' expert disclosures had passed. (Id.) The Cargill Defendants demanded

that Plaintiffs supplement their responses by, among other things, identifying specific instances of each of the Cargill Defendants' alleged wrongdoing. Plaintiffs responded on October 31, 2008, declining to supplement any responses but stating that "some examples" of Cargill-specific "activities of improper waste handling and disposal … can be provided and the State will undertake to do so." (Oct. 31, 2008 Email from R. Garren to B. Jones: Ex. D.) Plaintiffs have not provided any such supplementation, and in fact, have not supplemented their interrogatory responses since 2007.

On March 20, 24, and 26, 2009, the Cargill Defendants reminded Plaintiffs of their obligation to supplement their discovery requests and of the parties' October 2008 correspondence on this topic. (March 20-26, 2009 Email chain: Ex. E; Ex. A at 7.) Plaintiffs responded on March 26 by vaguely averring to "work[] on some supplemental responses" that they were "aiming" to provide by approximately April 3. (Ex. E.)

Since the inception of this suit nearly four years ago, Plaintiffs have claimed they possess specific evidence supporting each of the specific claims asserted as to each of the Cargill Defendants, claims on which Plaintiffs will bear the burden of proof at trial. Since August 2006, the Cargill Defendants have been actively seeking this Defendant-specific information.

ARGUMENT

Because Plaintiffs continue to resist providing sufficient discovery responses and have failed to adequately supplement their discovery responses despite repeated requests, the Cargill Defendants request the Court intervene to compel production so that the Cargill Defendants can adequately defends themselves at trial. Specifically, the Court should compel Plaintiffs (1) to provide full and sufficient answers and responses to the Cargill Defendants' February 2009 discovery requests, and (2) to supplement their responses to all 17 of the interrogatories

originally propounded by Cargill in August 2006 and to CTP Interrogatories Nos. 3, 5-9, and 11-18.[2] This matter is fast approaching trial, and the Cargill Defendants are entitled to discovery of all of the State's evidence supporting its Cargill-specific claims.

I. The Court Should Compel Sufficient, Complete, and Nonevasive Responses to the Cargill Defendants' February 2009 Discovery Requests.

The Court should overrule Plaintiffs' objections to the Cargill Defendants' discovery requests based on vague, general assertions of overbreadth, harassment, and undue burden. "A party opposing a discovery request cannot make conclusory allegations that a request is irrelevant, immaterial, unduly burdensome, or overly broad." Gheesling v. Chater, 162 F.R.D. 649, 650 (D. Kan. 1995) (citations omitted); accord, e.g., Cardenas v. Dorel Juvenile Group, Inc., 232 F.R.D. 377, 380 n.16 (D. Kan. 2005); McCloud v. Bd. of Geary County Comm'rs, 2008 U.S. Dist. LEXIS 61612, at *9 (D. Kan. Aug. 11, 2008). Where a party makes "only conclusory allegations of burdensomeness, and provides no detailed explanation ... which demonstrate[s] that providing such information would be burdensome, time-consuming, or expensive," the resisting party has not established undue burden. In re Urethane Antitrust Litig., 237 F.R.D. 454, 454 (D. Kan. 2006) (quoted in Metzger v. Am. Fid. Assur. Co., 2006 U.S. Dist. LEXIS 79956, at *25-26 (W. D. Okla. Oct. 31, 2006)).

Rather, "the party resisting discovery must show specifically how each discovery request is irrelevant, immaterial, unduly burdensome or overly broad." Gheesling, 162 F.R.D. at 650. As the District of Kansas recently remarked, "[s]imply saying a task is unduly burdensome or 'oppressive' does not make it so." McCloud, 2008 U.S. Dist. LEXIS 61612, at *9. Plaintiffs

[2] For the Court's and parties' convenience, the Cargill Defendants provide summary charts of these interrogatories describing 1) Plaintiffs' prior supplementation, if any, 2) the subject of the discovery request, and 3) the source of the subject matter with specific reference to Plaintiffs' Amended and Second Amended Complaints. (Ex. F.)

"must meet their burden to establish how each request is overly broad by submitting affidavits or offering evidence revealing the nature of the burden." Id. (citations and quotations omitted).

Here, Plaintiffs assert that the following requests are overly broad and/or unduly burdensome without any attempt at establishing a legal or factual basis for such objections: RFA Nos. 5 and 6; Interrogatory Nos. 1, 2, 3, and 4; and Document Request Nos. 1, 4, 5, 6, 8, and 9. (Dkt. Nos. 1933-12 at 3, 9-18.) The Court should bar Plaintiffs from relying on these blanket, unsupported claims of burden and overbreadth. See, e.g.,, Gheesling, 162 F.R.D. at 650.

A. Plaintiffs Must Either Admit or Deny the Cargill Defendants' RFAs.

Federal Rule of Civil Procedure 36(a)(1)(A) directs that a party may ask another to admit "facts, the application of law to fact, or opinions about either." Thus, requests for admission may properly seek "the application of law to the facts of the case." Heartland Surgical Specialty Hosp., LLC v. Midwest Div., Inc., 2007 U.S. Dist. LEXIS 80182, at *18. (D. Kan. Oct. 29, 2007). The "answering party must admit, specifically deny, or state in detail why the request cannot be truthfully admitted or denied." Brockmann v. Bd. of County Comm'rs, 2009 U.S. Dist. LEXIS 1899, at *53 (D. Kan. Jan. 12, 2009). Rule 36 mandates that a denial "must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest." Responses are "insufficient" where "they do not meet the substance of the requested admissions." Payless Shoesource Worldwide, Inc. v. Target Corp., 2006 U.S. Dist. LEXIS 53634, at *9 (D. Kan. Aug. 2, 2006).

Hence, courts have admonished parties for rewriting requests for admission such that the responses did not address the full substance of the original requests. See, e.g., Payless, 2006 U.S. Dist. LEXIS 53634, at *7-9. The Payless court noted that although "[Rule] 36 does allow

for partial responses," it does not allow a plaintiff to "simply omit[] any reference" to parts of a request that it does not want to answer. Id. at *8 (citation omitted). Here, most of Plaintiffs' RFA responses fail to meet the substance of the request and thus fail under Rule 36.

Request for Admission 1 states that "[p]oultry waste is an effective fertilizer when properly used," borrowing from a direct quote from A.G. Edmondson's opening remarks at the hearing on Plaintiffs' motion for a preliminary injunction. (Compare Dkt. Nos. 1933-12 at 1 with Ex. G: Feb. 19, 2008 P.I. Hrg. Tr. at 31:11-14.) Plaintiffs' response tries both to admit the statement by Mr. Edmondson and to deny it based on other grounds. Plaintiffs cannot have it both ways. The Rules require that they must either (1) admit the statement, or (2) deny the statement, or (3) "state in detail" why they cannot admit or deny it. See Fed. R. Civ. P. 36(a)(4).

Requests for Admission 5 and 6 require Plaintiffs to admit to deny whether "[e]very compound that contains phosphorus is a hazardous substance under CERCLA." (Dkt No. 1933-12 at 3.) Because Plaintiffs have put this question directly at issue, most recently in their response to the Defendants' motion for summary judgment on Plaintiffs CERCLA claims (Dkt. No. 1913 at 2, 10-15), they cannot justifiably claim that it is irrelevant or overbroad. Plaintiffs' attempt to substitute their own language concerning whether "phosphorus-containing compounds *in poultry waste*" (Dkt No. 1933-12 at 3) for the requests the Cargill Defendants *actually* posed is not authorized by the Rules and is not acceptable. See Payless, 2006 U.S. Dist. LEXIS 53634, at *7-9.

Requests for Admission No. 7, 8, 9 and 10: Plaintiffs refused to answer these RFAs, claiming they could not understand them because were "non-sensical." (Dkt. No. 1933-12 at 4-5.) Despite firmly believing in the accuracy of their original RFAs, the Cargill Defendants nonetheless offered to modify RFA Nos. 7–10 using language from the particular pages of Teena

Gunter deposition testimony cited by Plaintiffs in the March 19 response (id. at 9-10), as follows.

> RFA No. 7: The Oklahoma Department of Agriculture, Food & Forestry intends the Animal Waste Management Plans it drafts for Oklahoma poultry growers to meet the regulatory requirements under the Oklahoma Registered Poultry Feeding Operations Act and the rules and regulations developed under that Act.
>
> RFA No. 8: The Oklahoma Department of Agriculture, Food & Forestry does not intend the Animal Waste Management Plans it drafts for Oklahoma poultry growers to meet the regulatory requirements under the Oklahoma Registered Poultry Feeding Operations Act and the rules and regulations developed under that Act.
>
> RFA No. 9: The Oklahoma Department of Agriculture, Food & Forestry bases the Animal Waste Management Plans it drafts for Oklahoma poultry growers on current scientific standards for animal waste management and any applicable federal, state or local regulations or policies.
>
> RFA No. 10: The Oklahoma Department of Agriculture, Food & Forestry bases the Animal Waste Management Plans it drafts for Oklahoma poultry growers on anything other than current scientific standards for animal waste management and any applicable federal, state or local regulations or policies.

(Ex. A at 3.) Plaintiffs may not simply assert that questions it dislikes are "non-sensical" and thereby refuse to answer them.

Further, with respect to RFA Nos. 9 and 10, as the ultimate governing body, the State of Oklahoma should be in the best position to know exactly which "federal, state, or local regulations or policies" apply to Oklahoma's AWMPs. (Dkt. No. 1933-12 at 4-5.) The Cargill Defendants' statements are neither "vague" nor "ambiguous," but quite specific. Either ODAFF bases the AWMPs on current scientific standards and applicable laws or it does not, and the State is obliged to take a position. The Court should compel Plaintiffs to respond to the substance of these requests.

Requests for Admission Nos. 11, 12 and 13: Plaintiffs refuse to answer these RFAs on the ground that they are "incapable" of being admitted or denied. (Id. at 6-7.) The RFAs state:

> 11. The levels of land application of poultry litter set forth for specific fields in Oklahoma Animal Waste Management Plans are reasonable levels.

12. The levels of land application of poultry litter set forth for specific fields in Oklahoma Animal Waste Management Plans are not reasonable levels.
13. The levels of land application of poultry litter set forth for specific fields in Oklahoma Animal Waste Management Plans are sometimes reasonable levels and sometimes not reasonable levels.

One of these must be true from Plaintiffs' perspective: The application levels set in the AWMPS are either always reasonable, are never reasonable, or are sometimes reasonable or sometimes not. As the ultimate governing body, the State should be able to articulate whether the permitted levels of poultry litter in Oklahoma AWMPs are "reasonable" and "not reasonable."

Plaintiffs' complaint that the requests do "not define the term 'reasonable' or specify 'reasonable for what purpose,'" is difficult to fathom. The word reasonable is one of the most familiar in the legal lexicon; Black's defines the term to mean "fair, proper, or moderate under the circumstances," Black's Law Dictionary at 1272 (7th ed. 1999) (see also Dkt. No. 1933-12 at 6; Ex. A at 4), and juries are asked to apply the term every day. Indeed, Plaintiffs' own Second Amended Complaint ("SAC") uses the terms "reasonable" and its counterpart "unreasonable" over a dozen times. (SAC ¶¶ 87, 88, 96,98, 199, 101, 107, 109-112, 114, 126: Dkt. No. 1215.) "Reasonable" is a comprehensible word, and Plaintiffs must answer these RFAs without equivocation.

Requests for Admission Nos. 14, 15 and 16 ask Plaintiffs to admit or deny that "Oklahoma has no evidence based on" 1) "the specific chemical makeup of poultry waste," 2) "DNA analysis," and 3) "biological markers" "that any poultry waste that may be present in the waters of the Illinois River Watershed comes from any particular poultry house." (Dkt. No. 1933-12 at 7-8.) Plaintiffs respond by admitting that they have "no evidence solely based on" these grounds. (Id., emphasis in original.) The requests, however, do not ask the State to address whether it has any poultry-house-specific evidence that is solely derived from particular

types of scientific analysis; they ask whether the State has any poultry-house-specific evidence from these sources at all. Because Plaintiffs' responses fail to address the substance of the requests, the Court should require Plaintiffs to sufficiently answer. See Payless, 2006 U.S. Dist. LEXIS 53634, at *7-9.

Finally, in response to each RFA – including those few that were sufficiently answered – Plaintiffs mistakenly object on the ground that the Cargill Defendants exceeded their allowance under N.D. Okla. LCvR 36.1. This assertion is inaccurate. The local rule grants each party leave to serve 25 RFAs, for a total of 50 between the two Cargill Defendants. See N.D. Okla. LCvR 36.1. The Cargill Defendants contributed a total of 30 RFAs to the collective set served by Defendants in March 2007. (See Ex. A. at 1.) Because the February 2009 set included only 16 additional RFAs, the Cargill Defendants have not yet reached, must less exceeded, their combined limit of 50.

In sum, the Court should compel Plaintiffs to provide sufficient answers to the Cargill Defendants' RFA Nos. 1, 5, 6, 7, 8, 9, 10, 11, 12 ,13, 14, 15, and 16.

B. Plaintiffs Must Provide Complete and Nonevasive Interrogatory Responses and Cannot Point to Undifferentiated Masses of Documents in Lieu of Answering.

Interrogatories may properly inquire into an opponent's contentions in the case and the factual basis therefor. Cont'l Ill. Nat'l Bank & Trust Co. v. Caton, 136 F.R.D. 682, 684 (D. Kan. 1991). "The defendant is entitled to know the factual basis of plaintiff's allegations and the documents which the plaintiff intends to use to support those allegations." Id. Accordingly, answers to interrogatories must include detail sufficient to respond fully, and cannot evade the question asked. Id. ("answers to interrogatories must be responsive, full, complete and unevasive") (quoting Miller v. Doctor's General Hosp., 76 F.R.D. 136, 140 (W.D. Okla. 1977).

The Cargill Defendants served four interrogatories in the February 2009 set. For each,

Plaintiffs failed to provide either a complete and responsive narrative answer or to adequately specify documents in lieu of a narrative response. (See Dkt. No. 1933-12 at 9-13.) As noted above, the Court has chastised the State on multiple occasions for its refusal to provide sufficient particularity in response to the Cargill Defendants' interrogatories (and document requests). Not only is the State bound to follow Federal Rule of Civil Procedure 33 in this regard, the State is also bound to this Court's prior specific Orders requiring the State to comply with these Rules.

This Court has required Plaintiffs responding to an interrogatory by using a Rule 33(d) reference to documents "to indicate, with some degree of specificity, from what documents the answer can be 'derived or ascertained' and to "clearly identif[y]" the documents containing an interrogatory's answer." (May 17, 2007 Ord. at 3.) This holding is supported by Rule 33(d) and abundant case law. E.g., Oleson v. K-Mart Corp., 175 F.R.D. 560, 564 (D. Kan. 1997) (party that opts to produce records in lieu of answering an interrogatory must specify records in detail sufficient for propounding party to locate and identify – as readily as responding party – records from which answer to particular interrogatory may be ascertained); Pulsecard, Inc. v. Discover Card Servs., 168 F.R.D. 295, 305 (D. Kan. 1996) (party must "specifically designate what business records answer each interrogatory"); Flour Mills of Am., Inc. v. Pace, 75 F.R.D. 676, 682 (E.D. Okla. 1977) ("A broad statement that the information sought is available from a mass of documents and that the documents are available for inspection simply is not a sufficient response ….").

The Court has also previously held that Plaintiffs' interrogatories answers are deficient where they merely "answer[] [an] interrogatory by stating that the violations occur wherever a violation has occurred." (Feb. 26, 2007 Ord. at 11: Dkt. No. 1063.) If a party is unable to comply with Rule 33(d), "it must otherwise answer the interrogatory fully and completely."

Oleson, 175 F.R.D. at 564. Notwithstanding the Rules and the Court's previous Orders, Plaintiffs nonetheless respond to the Cargill Defendants' four interrogatories by directing the Cargill Defendants to vast arrays of unparticular documents and providing circular narratives.

Interrogatory 1 seeks an explanation for the RFAs for which Plaintiffs refused to provide an unqualified admission. In response, Plaintiffs direct the Cargill Defendants to huge masses of information – essentially every document produced in this case. (Dkt. No. 1933-12 at 9-10.) Under Rule 33(d) and the Court's Orders, Plaintiffs cannot stand on blanket references to "discovery disclosures to Defendants, including but not limited to interrogatory responses, document productions, expert witness reports, and depositions." (Id.) Similarly, references to "documents produced from the files of ODAFF" or "the grower files of ODAFF" (id.) are wholly insufficient under Rule 33(d) and the Court's Orders against Plaintiffs.

Interrogatory 2 requests that Plaintiffs identify with specificity the location and boundaries of each facility or portion of a facility for which they assert a Cargill entity is or was an "owner," "operator," or "arranger" and from which Plaintiffs assert a "release" or "threatened release" resulted." (Id. at 10.) Plaintiffs first refuse to provide a narrative response on grounds of overbreadth and undue burden, but offer no support for either objection. (Id. at 11.) No party may fairly contend that a request to describe its own claim is "overly broad and unduly burdensome." Plaintiffs carry the burden to prove the existence of a CERCLA facility or facilities in this case, and cannot tenably claim that a request that they simply describe the location and boundaries of such facilities is overly broad. Plaintiffs will need to prove the locations and scope of any facilities at trial, and thus must provide that information in discovery. The State's attempt to shift the burden of proof away from itself is improper and this Court should not condone it.

Plaintiffs also invoke Rule 33(d) in response to Interrogatory No. 2, asserting that the Cargill Defendants may derive an answer from 1) "the grower and applicator files of ODAFF" pertaining to the Cargill Defendants' growers' poultry operations, 2) "the reports of the State's investigators," 3) "the State's productions of its scientific documents," 4) "the State's expert reports," or (5) "the Cargill Defendants' own files." (Id.) The universe of documents included in these five categories likely includes tens of thousands of pages. Rule 33(d) and the Court's discovery Orders against Plaintiffs preclude such vague and nonspecific responses. See, e.g., Feb. 24, 2007 Ord.; May 17, 2007 Ord.; Flour Mills, 75 F.R.D. at 682. The Court should direct Plaintiffs either to identify the particular documents that contain the responsive information or to respond narratively to the question posed.

Interrogatory 3 asks Plaintiffs to identify by date and location each "instance" known to them in which any Cargill entity or Oklahoma poultry grower who has contracted with a Cargill entity has applied poultry litter in violation of any Oklahoma statute or regulation or in a manner inconsistent with the terms of an AWMP issued[3] by ODAFF. (Dkt. No. 1933-12 at 12.) Plaintiffs again refuse to provide a narrative response on unsupported overbreadth and burden grounds. (Id.)

Again, no party may reasonably contend that a request to describe its own claim is "overly broad and unduly burdensome." The State carries the burden to prove the existence of regulatory and statutory violations in this case – it cannot claim that simply describing its contentions about such violations is anything but relevant. Plaintiffs' complaint asserts that "[e]ach instance of this conduct" constitutes a separate violation of a statute or regulation (SAC

[3] Consistent with the Cargill Defendants' offer to revise RFA Nos. 7-10, the Cargill Defendants would modify this request to use the verb "draft" rather than "issue" in keeping with Teena Gunter's 30(b)(6) testimony.

¶¶ 128, 129, 130, 134, 137), and seeks a separate civil penalty for each violation. (SAC ¶¶ 131, 135, 138: alleging "the State of Oklahoma is entitled to an assessment of civil penalties … for each respective violation"). Plaintiffs must therefore specifically identify each "instance" so that the Cargill Defendants may adequately defend against these claims at trial.

Further, under Rule 33(d) and the Court's Orders, Plaintiffs' mere assertion that "[t]he evidence that the land application in the IRW of poultry waste from the Cargill Defendants' birds … is or is likely to be causing pollution of the waters of the State is overwhelming" (Dkt. No. 1933-12 at 12), is mere posturing and does not respond to the interrogatory, which asks what that evidence actually **is**. Nor may Plaintiffs contend that the Cargill Defendants may derive the answer to this request from "governmental reports" or by way of reference to all of their experts' voluminous reports. (See id.) This Court should require Plaintiffs to immediately either identify the particular documents that contain the response to Interrogatory No. 3 or narratively respond.

Interrogatory 4 asks Plaintiffs to identify by date, location, and actor any claimed unlawful act or omission by any Cargill entity, or any poultry grower who has contracted with a Cargill entity, in connection with the land application of poultry litter. (Dkt. No. 1933-12 at 13.) Plaintiffs again assert blanket claims of overbreadth and undue burden some and refuse to answer, but fail to identify any support for the overbreadth or burden claims. (Id.) Again, no plaintiff may tenably contend that a request to describe its own claim is "overly broad and unduly burdensome." Plaintiffs have alleged multiple unlawful acts by the Cargill Defendants, e.g., SAC ¶¶ 55, 98, 100, 102, 119, 131, 135, 138, and they carry the burden of proving those unlawful acts. Plaintiffs thus cannot reasonably claim that simply identifying their contentions is anything but perfectly relevant. Nor do Rule 33(d) or the Court's Orders allow Plaintiffs to stand on a vague cross-reference to the masses of documents described in Interrogatory Nos. 2 and 3 as

a means of answering Interrogatory No. 4. (See Dkt. No. 1933-12 at 13.) The Court should grant the Cargill Defendants motion to compel a complete and nonevasive answer to this request as well.

In sum, for each of the February 2009 interrogatories, the Court should order Plaintiffs to "clearly identif[y]" with specificity which documents they assert answers any interrogatory or to provide a particular and complete narrative answer to each interrogatory.

C. Under the Court's Prior Orders, Plaintiffs Must Detail the Documents Responsive to the Cargill Defendants' Requests.

As explained above, due to Plaintiffs' initial document production failures, the Court ordered supplemental Rule 34(b) productions identifying particular boxes of documents responsive to particular requests for production. (May 17, 2007 Ord. at 7; July 6, 2007 Ord. at 4: Dkt. No. 1207 (clarifying May 17 Order in this respect)); see also e.g., United States v. Magnesium Corp. of Am., 2006 WL 2222358, at *6 (D. Utah Aug. 2, 2006) (party is obligated to provide a key or index if producing a large volume of documents that are problematic to view without some sort of "guidance"). Plaintiffs' responses to the Cargill Defendants' February 2009 document requests act as though the Court's earlier rulings did not exist. Not only do Plaintiffs fail to produce documents or even offer to make responsive materials available, they fail to particularly point the Cargill Defendants to produced responsive documents.

Instead, for each of the document requests subject to this motion, Plaintiffs assert relevance, burden, and/or overbreadth objections without citation to support or foundation. Dkt. No. 1933-12 at Doc. Request Nos. 1, 4, 5, 6, 8, and 9.) A Rule 34 objection to a document request "must clearly set forth the specifics of the objection and how that objection relates to the documents being demanded." 7 Moore's Fed. Practice – Civil § 34.13(2)(b) (2006). As discussed above, Plaintiffs' boilerplate objections are impermissible on their face and do not

permit Plaintiffs to refuse to produce any documents. If Plaintiffs intend to stand on their overbreadth, undue burden, or relevance objections, they bear the burden to explain (and prove) their position.

Request for Production 1 seeks documents relating to investigations regarding BMPs, Inc. (Dkt. No. 1933-12 at 13.) Plaintiffs' questioning of witnesses at depositions suggests that their attorneys know of some investigation into BMP's, Inc. or Eucha-Spavinaw BMPs, Inc. that may be related to some issue relevant to the claims or defenses in this case. (See Ex. H: Sheri Herron Dep. at 212-13, 287.) The Cargill Defendants are entitled to any documents associated with any such investigation that Plaintiffs may have. If Plaintiffs have no such documents, they need to state that fact (as they did with respect to Document Request Nos. 2 and 3). (See Dkt. No. 1933-12 at 14.)

Request for Production 4 seeks documents relating to any violation or alleged violation of the federal hazardous waste subtitle 42 U.S.C. § 6921 et seq., or its regulations, by any Cargill entity or poultry grower who has contracted with a Cargill entity. (Id.) Plaintiffs make no offer of production. (Id. at 15.) As explained in the March 24 letter, the Cargill Defendants are willing to narrow this request to claimed violations within the IRW. Given that Plaintiffs seek relief against the Cargill Defendants based on this statute (SAC Count 3), any records Plaintiffs may have regarding any violations are clearly relevant. At this point in the case, Plaintiffs surely have identified such documents. Plaintiffs must either immediately produce these materials or affirmatively state that none exist in their possession, custody, or control.

Request for Production 5 requests documents reflecting or relating to the issuance of AWMPs to poultry growers in the IRW since the State filed this suit, including any list or compilation of such permits or of the farmers to whom they were issued. (Id.) Despite the

limited and highly relevant nature of this request, Plaintiffs argue that it is "ambiguous," "overly broad, unduly burdensome and harassing." (Id.) Plaintiffs note that they have produced some materials responsive to this request, but insist that listing such documents "would be unduly burdensome and cumulative." (Id.) Plaintiffs cannot prevail on blanket claims of undue burden, overbreadth, or "harassment" either as to production in the first instance, or as to their claim (in effect) that complying with the requirements of the Court's May 17 and July 6, 2007 Orders would be "unduly burdensome." (See id.) Plaintiffs must produce or identify the documents responsive to this request.

Request for Production 6 seeks documents reflecting or relating to any claim that land application of poultry litter occurred at farms owned or operated by growers who have contracted with the Cargill Defendants. (Id. at 16.) This is of course the core factual premise of Plaintiffs' case against the Cargill Defendants: that growers that contract with the Cargill Defendants land apply poultry litter. Nevertheless, Plaintiffs again refuse to answer based on unsupported claims of burden and overbreadth, while broadly asserting that documents responsive to this Request may be found "in the grower and applicator files of the ODAFF." (Id.) The Court's prior Orders require Plaintiffs to respond with a great deal more particularity than this. Likewise, Plaintiffs cannot simply claim that listing responsive documents (and thereby complying with the Court's Orders) would be unduly burdensome. (See id.)

Request for Production 8 asks for documents reflecting or relating to communications from Oklahoma to any Defendant relating to a violation of federal, state, or local statute or regulation committed or allegedly committed by any grower who has contracted with that Defendant to raise poultry. (Id. at 17.) Again, Plaintiffs assert boilerplate objections and simply contend that documents responsive to this Request may be found "in the grower files of the

ODAFF and files of the ODEQ." (Id.) The Court's Orders require far more particularity, and Plaintiffs cannot stand on flat assertions that listing responsive documents (and thus complying with the Court's prior Orders) would be unduly burdensome. (See id.)

Request for Production 9 seeks documents reflecting or relating to efforts or consideration by Oklahoma before December 19, 1997 to prohibit or regulate the land application of poultry litter. (Id.) Plaintiffs' objections of irrelevance, undue burden, and overbreadth, all offered without citation to factual support, also fail here. Further, the Court's Orders require a far more specific response than Plaintiffs' reference to "responsive documents at the OSRC and the Office of the Oklahoma Secretary of the Environment." (Id. at 18.) Plaintiffs may not refuse to comply with Court Orders because they believe compliance to be "unduly burdensome." (See id.)

For all these reasons, the Court should require Plaintiffs to fully respond to Requests for Production Nos. 1, 4, 5, 6, 8, and 9.

II. Plaintiffs Must Supplement Their Interrogatory Answers To Provide Cargill-Specific Information.

The Court should also compel Plaintiffs to supplement their original responses to a number of the Cargill Defendants' earlier discovery requests. Rule 26(e)(1)(A) requires Plaintiffs to supplement their interrogatories responses "in a timely manner" upon learning that "in some material respect the ... response is incomplete or incorrect, and if the additional or correction information has not otherwise been made known to the other parties during the discovery process or in writing." The Tenth Circuit has thus noted that "parties are under a continuing duty to supplement their responses." Price v. Lake Sales Supply R. M., Inc., 510 F.2d 388, 395 (10th Cir. 1974). Rule 37 mandates that evasive or incomplete responses "must be treated as a failure to disclose, answer, or respond," and the party failing to supplement is

generally disallowed from using the withheld information as evidence before the Court. See Fed. R. Civ. P. 37(a)(4) and (c)(1).

The Cargill Defendants' August 2006 interrogatories asked Plaintiffs to "[s]eparately for each Cargill entity at issue, state with particularity" the factual and legal basis for various claims. In their initial December 2006 responses, Plaintiffs qualified many answers by objecting that:

(1) They did not then "know the exact relationship between" the Cargill Defendants or their "particular activities" and had only recently received documents needed to answer, which prevented them from "at present stat[ing]" their response "with particularity" as to each Cargill entity. (Dkt. Nos. 1933-7, 1933-8, and 1933-9 CTP Interrogs. 11, 12, 13, 14, 15, 16, 17, 18.)

(2) They could not fully answer "[b]ecause discovery [was] ongoing." (Dkt. No. 1933-7 at Gen. Obj. No. 5 & Resp. to Cargill Interrogs. 1-17, CTP Interrogs. 9, 13, 14-17.)

(3) Plaintiffs had determined the interrogatories were premature because they were related to expert work not yet completed. (Id. at Cargill Interrogs. 1-17 & CTP Interrogs. 6-9, 13-18.)

These objections all inherently recognize Plaintiffs' obligation to later supplement their responses at a future, more "mature" time. (See id. at Cargill Interrog. 2-4, 6, 13-14, and 16 & CTP Interrog. 3, 5-8, 13, 15-16.)

In June 2007, as required by the Court's May 17, 2007 Order, Plaintiffs provided limited supplemental responses to eighteen of the thirty-one interrogatories that are the subject of this motion, primarily to adjust their Rule 33(d) designations. (Dkt. Nos. 1933-10 and 1933-11) However, in doing so, Plaintiffs incorporated their prior vague responses and stated or provided substantially similar responses. For instance, Plaintiffs stated that they would supplement their response "as responsive" or "additional responsive information" is "identified." (Dkt. No. 1933-10 at Resp. Cargill Interrog. Nos. 2-4, 6, 9, 12-16 & CTP Interrog. Nos. 3-8, 13, 15-16.)

Again under Court Order in October 2007, Plaintiffs provided limited additional

supplementation of their responses to CTP interrogatories 9 and 13. (Dkt. Nos. 1933-12 and 1933-13, *attached as Ex. 2*.) In these compelled October 2007 responses, Plaintiffs identify, "[b]y way of example and not by limitation," ODAFF records of a single Cargill grower that Plaintiffs claim "circumstantially demonstrate violations of law for which Cargill is responsible." (Dkt. No. 1933-12 Ex. 2 at internal page 3 & docket entry page 40.) Unless Plaintiffs intend to limit their proof to circumstantial evidence of one grower, they have a Rule 26(e) obligation to supplement their responses. Plaintiffs recognized that their supplementation was incomplete, stating that "[s]hould the State develop such direct evidence, or additional circumstantial evidence, it will supplement its response" (id. at internal pages 3, 7 & docket entry pages 40, 44) and promising further supplementation after their liability expert reports were served (id. at internal pages 11-12 & docket entry pages 48-49). Yet, almost a year and a half later, Plaintiffs have not supplemented these responses with any additional direct, circumstantial, or expert evidence of the Cargill Defendants' alleged violations of law.

Plaintiffs' responses to each of the interrogatories cited in Cargill Defendants' October 17, 2008 letter well illustrate their failures to comply with their duty to supplement. For example, Plaintiffs allege that:

> Each of the Poultry Integrator Defendants has long known that ... [a]t many locations, phosphorus and other hazardous substances, pollutants and contaminants have built up in the soil to such an extent that, even without any additional application of poultry waste to the land, the excess residual phosphorus and other hazardous substances, pollutants, contaminants will continue to run-off and be released into the waters of the IRW in the future.

(SAC ¶ 52.) Accordingly, CTP requested the facts supporting this allegation. (Dkt. No. 1933-7 at 12: CTP Interrog. No. 9.) Plaintiffs responded that CTP's interrogatory was "premature"[4] and

[4] The Court held in February and again in May 2007 that such "contention interrogatories are permitted and are not premature ..." (May 17, 2007 Ord. at 8, n.4, citing Feb. 26, 2007 Ord. at 4.)

responded only by reference to vague "soil test results ... in several counties of Oklahoma" without reference to either of Cargill Defendants' specific alleged knowledge. (Id. at 13.) Plaintiffs have never supplemented this response despite Cargill Defendants' specific requests that they do so.

Similarly, Plaintiffs allege "[t]he contracts ... between the respective Poultry Integrator Defendants and their poultry growers ... constitute contracts of adhesion." (SAC ¶ 34.) CTP requested the facts supporting this allegation, "[s]eparately for each Cargill entity at issue." (Dkt. No. 1933-7 at 18: CTP Interrog. No. 14.) Plaintiffs again responded the interrogatory was "premature" and responded: "as a general matter, subject to ongoing discovery of the particulars relevant to the Cargill entities, integrated poultry production companies, like the Cargill entities" utilize "contracts of adhesion." (Id. at 19-20.) Despite the Cargill Defendants' requests, Plaintiffs have failed to supplement this response with Defendant-specific information.

Plaintiffs also allege that each of the "Poultry Integrator Defendants have knowingly retained" the benefit of having "avoided the costs of properly managing and disposing of their poultry waste." (SAC ¶¶ 141, 145.) Yet when asked by CTP to "[s]eparately for each Cargill entity at issue" set forth the facts supporting this claim, Plaintiffs responded the interrogatory was "premature" and stated "as a general matter, subject to ongoing discovery of the particulars relevant to the Cargill entities, the Poultry Integrator Defendants ... have not accepted responsibility for the proper disposal of their waste." (Dkt. No. 1933-7 at 24-25: CTP Interrog. No. 17.) Plaintiffs have never supplemented this response despite Cargill Defendants' specific requests that they do so.

In addition, as noted above, Plaintiffs deferred answering some interrogatories on the basis that the subject matter was within the scope of Plaintiffs' expert witnesses' work, which

was not yet completed at the time of Plaintiffs' original responses. Plaintiffs' expert disclosure deadlines have long since passed, mooting this objection, but Plaintiffs have nevertheless failed to supplement their responses. The Court should direct Plaintiffs to identify the facts specific to Cargill and CTP on which Plaintiffs intend to rely for the specific allegations described in Cargill Interrogatory Nos. 1-17 and CTP Interrogatory Nos. 6-9 and 13-18. Should Plaintiffs contend these specific facts are contained in their expert disclosures, the Court should direct Plaintiffs to identify by author and page number where those facts can be found.

Plaintiffs have often acknowledged supplementation of their responses is appropriate when they identify responsive or additional responsive information, or where they develop direct or circumstantial evidence to support their claims for either Cargill entity. Moreover, nearly five months ago, Plaintiffs' counsel stated such information exists and promised its delivery. (Ex. D: Oct. 31, 2008 R. Garren email.) Yet Plaintiffs have failed to follow through on that promise. The Court should order Plaintiffs to supplement such responses, namely: Cargill, Inc. Interrogatory Nos. 2, 3, 4, 6, 13, 14, and 16 and CTP Interrogatory Nos. 3, 5, 6, 7, 13, 15, and 16.

The supplementation sought by this motion goes to the heart of the factual allegations pled by Plaintiffs. As noted in attached summary chart at Exhibit F, all the interrogatories at issue cite verbatim allegations or paragraph citations from Plaintiffs' pleadings or are otherwise directly related to Plaintiffs' allegations. Plaintiffs are the master of their complaint. They do not allege enterprise or any other sort of aggregate liability, but instead assert claims against each named Defendant and claim that each is separately liable. Plaintiffs cannot rely on vague references to the poultry industry to support their claims; they must show individualized proof as to each named Defendant. The discovery rules and basic principles of fairness do not permit a party to allege material facts and then refuse to provide those same facts, but that is precisely

what Plaintiffs have done here despite repeated requests by the Cargill Defendants. The Court should order the requested supplementation.

CONCLUSION

As outlined above, Plaintiffs' objections to the Cargill Defendants' February 17, 2009 discovery requests are improper and the responses inadequate, and the Court should compel full and adequate responses to RFA Nos. 1, 5, 6, 7, 8, 9, 10, 11, 12 ,13, 14, 15, and 16; Interrogatory Nos. 1, 2, 3, and 4; and Requests for Production Nos. 1, 4, 5, 6, 8, and 9. The Court should also compel Plaintiffs to supplement their discovery responses to Cargill, Inc.'s Amended First Set of Interrogatory Nos. 1-17 and CTP's Amended First Set of Interrogatory Nos. 3, 5-9, 11-18.

Respectfully submitted,

Rhodes, Hieronymus, Jones, Tucker & Gable, PLLC

BY: /s/ John H. Tucker
JOHN H. TUCKER, OBA #9110
THERESA NOBLE HILL, OBA #19119
100 W. Fifth Street, Suite 400 (74103-4287)
P.O. Box 21100
Tulsa, Oklahoma 74121-1100
Telephone: 918/582-1173
Facsimile: 918/592-3390
And
DELMAR R. EHRICH
BRUCE JONES
KRISANN C. KLEIBACKER LEE
FAEGRE & BENSON LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402
Telephone: 612/766-7000
Facsimile: 612/766-1600
ATTORNEYS FOR CARGILL, INC. AND CARGILL TURKEY PRODUCTION, LLC

CERTIFICATE OF SERVICE

I certify that on the 30th day of March, 2009, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

W. A. Drew Edmondson, Attorney General	drew_edmondson@oag.state.ok.us
Kelly Hunter Burch, Assistant Attorney General	kelly_burch@oag.state.ok.us
J. Trevor Hammons, Assistant Attorney General	trevor_hammons@oag.state.ok.us
Daniel Lennington, Assistant Attorney General	Daniel.lennington@oag.ok.gov
Melvin David Riggs	driggs@riggsabney.com
Joseph P. Lennart	jlennart@riggsabney.com
Richard T. Garren	rgarren@riggsabney.com
Sharon K. Weaver	sweaver@riggsabney.com
Robert Allen Nance	rnance@riggsabney.com
Dorothy Sharon Gentry	sgentry@riggsabney.com
David P. Page	dpage@riggsabney.com
Riggs Abney Neal Turpen Orbison & Lewis, P.C.	
Louis W. Bullock	lbullock@mkblaw.net
J. Randall Miller	rmiller@mkblaw.net
Miller Keffer & Bullock Pedigo LLC	
William H. Narwold	bnarwold@motleyrice.com
Elizabeth C. Ward	lward@motleyrice.com
Frederick C. Baker	fbaker@motleyrice.com
Lee M. Heath	lheath@motleyrice.com
Elizabeth Claire Xidis	cxidis@motleyrice.com
Fidelma L Fitzpatrick	ffitzpatrick@motelyrice.com
Motley Rice LLC	
COUNSEL FOR PLAINTIFFS	
Stephen L. Jantzen	sjantzen@ryanwhaley.com
Paula M. Buchwald	pbuchwald@ryanwhaley.com
Patrick Michael Ryan	pryan@ryanwhaley.com
Ryan, Whaley & Coldiron, P.C.	
Mark D. Hopson	mhopson@sidley.com
Jay Thomas Jorgensen	jjorgensen@sidley.com
Timothy K. Webster	twebster@sidley.com
Gordon D. Todd	gtodd@sidley.com
Sidley Austin LLP	
L Bryan Burns	bryan.burs@tyson.com
Robert W. George	robert.george@tyson.com

Michael R. Bond michael.bond@kutakrock.com
Erin W. Thompson erin.thompson@kutakrock.com
Dustin R. Darst dustin.dartst@kutakrock.com
Kutack Rock LLP
COUNSEL FOR TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC.; AND COBB-VANTRESS, INC.

R. Thomas Lay rtl@kiralaw.com
Kerr, Irvine, Rhodes & Ables

Jennifer S. Griffin jgriffin@lathropgage.com
Lathrop & Gage, L.C.
COUNSEL FOR WILLOW BROOK FOODS, INC.

Robert P. Redemann rredemann@pmrlaw.net
Lawrence W. Zeringue lzeringue@pmrlaw.net
David C .Senger dsenger@pmrlaw.net
Perrine, McGivern, Redemann, Reid, Berry & Taylor, PLLC

Robert E. Sanders rsanders@youngwilliams.com
E. Stephen Williams steve.williams@youngwilliams.com
Young Williams P.A.
COUNSEL FOR CAL-MAINE FOODS, INC. AND CAL-MAINE FARMS, INC.

George W. Owens gwo@owenslawfirmpc.com
Randall E. Rose rer@owenslawfirmpc.com
The Owens Law Firm, P.C.

James M. Graves jgraves@bassettlawfirm.com
Gary V. Weeks gweeks@bassettlawfirm.com
Woody Bassett wbassett@bassettlawfirm.com
K.C.Dupps Tucker kctucker@bassettlawfirm.com
Bassett Law Firm
COUNSEL FOR GEORGE'S INC. AND GEORGE'S FARMS, INC.

John R. Elrod jelrod@cwlaw.com
Vicki Bronson vbronson@cwlaw.com
Bruce W. Freeman bfreeman@cwlaw.com
P. Joshua Wisley jwisley@cwlaw.com
Conner & Winters, LLLP
COUNSEL FOR SIMMONS FOODS, INC.

A. Scott McDaniel smcdaniel@mhla-law.com
Nicole M. Longwell nlongwell@mhla-law.com
Philip D. Hixon phixon@mhla-law.com
Craig Mirkes cmirkes@mhla-law.com
McDaniel, Hixon, Longwell & Acord, PLLC

Sherry P. Bartley sbartley@mwsgw.com
Mitchell Williams Selig Gates & Woodyard
COUNSEL FOR PETERSON FARMS, INC.

Michael D. Graves mgraves@hallestill.com
Dale Kenyon Williams, Jr. kwilliams@hallestill.com
COUNSEL FOR CERTAIN POULTRY GROWERS

I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

Thomas C. Green
Sidley Austin Brown & Wood LLP
1501 K Street NW
Washington, DC 20005
COUNSEL FOR TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC.; AND COBB-VANTRESS, INC.

s/ John H. Tucker